



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

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**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

**OCT 22 2012**

Mr. John C. Hall  
Hall & Associates  
1620 I Street, NW, Suite 701  
Washington, DC 20006-4033

**RE: Freedom of Information Act Request Nos. 01-FOI-00252-12; 01-FOI-00253-12;  
01-FOI-00254-12; 01-FOI-00255-12; 01-FOI-00256-12; 01-FOI-00257-12; 01-FOI-  
00258-12; 01-FOI-00259-12; 01-FOI-00260-12; 01-FOI-00261-12; 01-FOI-00262-12;  
01-FOI-00263-12; 01-FOI-00264-12; 01-FOI-00265-12; 01-FOI-00266-12; 01-FOI-  
00267-12; 01-FOI-00268-12; 01-FOI-00269-12**

Dear Mr. Hall:

This is in response to your eighteen Freedom of Information Act requests of September 26, 2012, which seek records associated with EPA Region 1's Draft National Pollutant Discharge Elimination System Permits for Exeter, New Hampshire (Permit No. NH01000871); Newmarket, NH (Permit No. NH0100196); and Dover, NH (Permit No. NH0101311).

Each FOIA requests "all analyses of information from the Great Bay Estuary that shows" a particular factual proposition or theory is *incorrect*. These assertions fall into three categories: statements that have been made in a July 13, 2012 letter from you to Ms. Ellen Gilinsky, Senior Policy Advisor in EPA's Office of Water, entitled "Confirmation of Major Scientific Errors/Uncertainties Regarding Proposed TN reduction for Great Bay Estuary in Depositions of Mr. Philip Trowbridge and Dr. Fred Short"; statements attributed to Mr. Trowbridge and Mr. Short made in depositions in connection with *City of Dover, et al. v. New Hampshire Department of Environmental Services* (Docket No. 217-2012-CV-00212), a civil action pending in a New Hampshire Superior Court; and statements from EPA's fact sheets for the draft permits.<sup>1</sup>

<sup>1</sup> See 01-FOI-00252-12 (all analyses of information from the Great Bay Estuary showing that a statement from Dr. Fred Short in a deposition is incorrect); 01-FOI-00253-12 (all analyses of information from the Great Bay Estuary showing that a statement regarding eelgrass loss in tidal rivers is incorrect); 01-FOI-00254-12 (all analyses of information from the Great Bay Estuary showing that a statement regarding a large increase in rainfall and eelgrass loss is incorrect); 01-FOI-00255-12 (all analyses of information from the

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The Region has concluded these requests do not reasonably describe the records being sought as required by 40 C.F.R. § 2.102(c) and are improper. The FOIAs as currently formulated do not permit the Region to identify and locate the requested records in a manner consistent with its obligations under the statute. These record requests are, in effect, asking Region 1 to examine thousands of pages of records within the agency to ascertain whether any information in them can be construed as relevant to the statements in the requests. Upon making those interpretative judgments, the Region must further determine whether such materials amount to "analyses of information from the Great Bay Estuary." A FOIA request that necessitates the agency to formulate opinions and analyses or to effectively conduct research or other services in order to respond to a request is not appropriate under FOIA. *See, e.g., Lamb v. IRS*, 871 F. Supp. 301, 304 (E.D. Mich. 1994) (finding requests outside scope of FOIA when they require legal research, are unspecific, or seek answers to interrogatories).

In accordance with our regulations, we offer you the opportunity to discuss and modify your requests to meet the requirements of the regulations. Please contact Samir Bukhari at (617) 918-1095 if you would like to discuss modifications. If we have not heard from you within 30 calendar days of the date of this letter, we will assume you are no longer interested in pursuing your requests, and your files will be closed.

If you consider any portion of this response to be a denial, you may appeal it by addressing your written appeal to the National Freedom of Information Officer U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov). Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight

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Great Bay Estuary showing that a statement related to numeric TN criteria for eelgrass is incorrect); **01-FOI-00256-12** (all analyses of information from the Great Bay Estuary showing that a statement related to increasing TN levels and the eelgrass population in tidal rivers is incorrect); **01-FOI-00257-12** (all analyses of information from the Great Bay Estuary showing that a statement related to macroalgae growth and the eelgrass population is incorrect); **01-FOI-00258-12** (all analyses of information from the Great Bay Estuary showing that a statement related to excessive macroalgae growth in tidal rivers is incorrect); **01-FOI-00259-12** (all analyses of information from the Great Bay Estuary showing that a statement related to epiphytes and eelgrass populations is incorrect); **01-FOI-00260-12** (all analyses of information from the Great Bay Estuary showing that a statement related to algal levels is incorrect); **01-FOI-00261-12** (all analyses of information from the Great Bay Estuary showing that a statement regarding transparency and eelgrass populations is incorrect); **01-FOI-00262-12** (all analyses of information from the Great Bay Estuary showing that a statement regarding data for specific tidal rivers, TN control and transparency is incorrect); **01-FOI-00263-12** (all analyses of information from the Great Bay Estuary showing that a statement regarding existing transparency, high turbidity, CDOM, and eelgrass in specific tidal rivers is incorrect); **01-FOI-00264-12** (all analyses of information from the Great Bay Estuary showing that the statement "Great Bay is not a transparency limited system because eelgrass populations receive sufficient light during the tidal cycle" is incorrect); **01-FOI-00265-12** (all analyses of information from the Great Bay Estuary showing that a statement regarding transparency in Great Bay and Lower Piscataqua River from 1990 to 2005 is incorrect); **01-FOI-00266-12** (all analyses of information from the Great Bay Estuary showing that a statement regarding transparency, algal growth, CDOM and turbidity in the major tidal rivers (Squamscott, Lamprey, Upper Piscataqua) is incorrect); **01-FOI-00267-12** (all analyses of information from the Great Bay Estuary showing that a statement regarding site-specific to evaluate the cause of eelgrass decline is incorrect); **01-FOI-00268-12** (all analyses of information from the Great Bay Estuary showing that the statement 'the various DES analyses [submitted to EPA] that confirmed (1) TN increases did not cause changes in transparency, algal levels or DO and (2) a "cause and effect" relationship between TN and transparency/DO did not exist, were excluded from the technical information presented in the 2009 numeric nutrient criteria document and, therefore, were never presented to EPA's internal peer review panel', is incorrect); **01-FOI-00269-12** (all analyses of information from the Great Bay Estuary showing that a statement regarding dissolved nutrient concentrations (2009-2011) and eelgrass populations is incorrect).



delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20001. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should include the RIN listed above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Perkins", written in a cursive style.

Stephen Perkins, Director  
Office of Ecosystem Protection

cc:

Cristeen L. Schena, R1 FOIA Officer

